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FILED

DEC 23 1987

No. 87-526

JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States

October Term, 1987

BOBBY FELDER,

Petitioner,

v.

DUANE CASEY, *et al.*,

Respondents.

**ON WRIT OF CERTIORARI
TO THE WISCONSIN SUPREME COURT**

JOINT APPENDIX

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**Petition for Certiorari filed September 22, 1987
Certiorari Granted November 9, 1987**

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<p>The following opinions and order have been omitted in printing this joint appendix because they appear on the following pages in the appendix in the printed Petition for Certiorari:</p>	
Amended Order For Judgment—Milwaukee County Circuit Court (May 23, 1985)	Pet. App. A-25
Opinion of the Wisconsin Court of Appeals (April 24, 1986)	Pet. App. A-21
Opinion of the Wisconsin Supreme Court (June 24, 1987)	Pet. App. A-1

RELEVANT DOCKET ENTRIES

DATE PROCEEDINGS

1982

- April 2 Filed, original summons and complaint.
May 17 Filed, letter extending time to answer.
June 7 Filed, Interrogatories.
Filed, Notice of Deposition.
Filed, Answer and Demand for Jury Trial.
July 2 Filed, scheduling order setting February 9, 1983,
at 8:30 A.M. as pre-trial date.

1983

- Jan. 14 Filed, Notice of Motion.
Filed, Plaintiff's January 1983, Motions, Affidavit In Support of Plaintiff's January 1983, Motions.
Filed, Plaintiff's First Amended Complaint.
Hearing on motions set for January 24, 1983,
at 9:00 A.M.
Jan. 24 Hon. William A. Jennaro Presiding. Plaintiff
in court by Attorney Curry First. Defendant
in court by Attorney Rudolph Conrad. Parties
stipulate that motions may be disposed of as
follows: As to plaintiff's motion to compel discovery,
defendant will pay to plaintiff the cost of the deposition.
As to motion to amend complaint, defendant consents to same
being amended. As to motion to modify pre-trial order,
pre-trial cancelled and to be rescheduled when pleading completed.
Feb. 17 Filed, Order in conformity with decision of 1-24-83.
Mar. 25 Filed, Answer to Plaintiff's First Amended Complaint
and Demand for Jury Trial.
Action set for pre-trial conference on June 3, 1983,
at 8:30 A.M. Cards sent.
Mar. 30 Filed, Demand for Jury Trial, fee paid.

DATE PROCEEDINGS

- June 3 Plaintiff present by Attorney Curry First. Defendant present by Attorney Rudolph Konrad. Action set for trial by jury on April 23, 1984, at 1:45 P.M.
Filed, signed Scheduling Order.
- Sept. 20 Filed, Notice of Motion and Motion to compel discovery and modify scheduling order.
- Sept. 26 Hon. R. W. Landry Presiding Branch 6.
Plaintiff in Court by Attorney Curry First. Defendants in Court by Attorney Rudolph M. Konrad, Assistant City Attorney, Statements by Counsel advising court of Stipulation entered into between counsel modifying the scheduling order, Court signs stipulation and order and matter adjourned to January 4, 1984 at 8:30 a.m. for a pretrial.
- Oct. 14 FILED, Answers to Plaintiff's Second set of Interrogatories.
Answers to Plaintiff's Second set of Interrogatories.
Answers to Plaintiff's Second set of Interrogatories.
Answers to Plaintiff's Second set of Interrogatories.
- 1984
- Jan. 4 Hon. R. W. Landry Presiding, branch 6.
Plaintiff in Court by Attorney Curry First. Defendants in Court by Assistant City Attorney Rudy Conrad. Pre-trial held in chambers. Date of May 14, 1984 at 2:00 p.m. remains in effect as previously set.
- Mar. 5 FILED, Notice of Motions.
Plaintiff's Motion to Modify Scheduling Order and Amend Complaint.
Plaintiff's Memorandum in Support

DATE PROCEEDINGS

- of Motion to Modify Scheduling Order and Amend Complaint.
Plaintiff's Second Amended Complaint.
- Mar. 12 Hon. R. W. Landry Presiding, Branch 6.
Plaintiff in Court by Attorney Curry First. Defendant in Court by Michael Whitcomb, Assistant City Attorney. Plaintiff's motion to amend complaint and modify scheduling order came on for hearing. Motion granted by the Court. Matter re-set to June 13, 1984 at 8:30 a.m. for a Scheduling Conference.
Trial date of May 14, 1984 cancelled by the Court.
- Mar. 23 FILED, Signed Order re-Motion of 3-12-84.
- June 12 FILED, Answer to Second Amended Complaint.
- June 13 Hon. Robert W. Landry Presiding.
Plaintiff in Court by Attorney Curry First. Defendant by Assistant City Attorney Michael E. I. Whitcomb. Conference held in chambers. Action set for Jury trial on March 4, 1985 at 2:00 p.m. Signed Scheduling Order, received and filed. Copy of Order given to each counsel.
(TWO WEEK TRIAL)
- Nov. 14 FILED, Stipulation and Signed Order modifying Scheduling Order.
- Jan. 23 FILED, Letter with Jury Demand Fee Paid \$24.00.
- Dec. 19 FILED, Stipulation and Signed Order modifying S/O.
- 1985
- Feb. 6 FILED, Plaintiff's List of Witnesses.

DATE PROCEEDINGS

- Feb. 18 FILED, Plaintiff's Motion to Secure Individual, Sequestered Voir Dire outside the presence of the panel.
FILED, Notice of Motions.
- Feb. 20 FILED, Defendants' Witnesses.
- Feb. 25 FILED, Medical Records.
- Mar. 1 FILED, Letter to Court dated 2-28-85.
- Feb. 25 Hon. Robert W. Landry Presiding. E. P. Burns Court Reporter. Plaintiff in Court by Attorney Curry First and Barbara Zack Quindel. Defendants by Assistant City Attorney Reynold Scott Ritter. Plaintiff's Motions in Limine, Voire dire and defendant's motion to Dismiss came on for hearing. Motions argued and presented. Motions taken under advisement.
- Mar. 4 Hon. Robert W. Landry Presiding. E. P. Burns Reporter. Plaintiff in Court in person and with Attorney Curry First and Barbara Zack Quindel. Defendants in Court in person and with Assistant City Attorney Reynold Scott Ritter. Statements by Counsel with reference to Court's Decision on Motions and further hearing on Motions in Limine proceeded. Court made its rulings. Defendant's motion to allow copies of depositions granted, Defendant's Motion for sequestration of witnesses granted. Parties proceeded to impanel a jury including two alternates as follows, to-wit:
MARY E. SMITH, JAMES G. SIEBENALLER, SALOMON FLORES, THOMAS OMANN, JR. GREGORY M. DOBY, JEANINE M. WALKER, MARIANNE WICKMAN, CARL LEWIS, SARAH FIFER, MILDRED M. SCHILLING, EVA LOIS RICE, EMMA J. TORRANCE, DORIS J. WRIGHT, GERTRUDE HARRIS, fourteen good and lawful citizens of the City and County of Milwaukee,

DATE PROCEEDINGS

- qualified to serve as jurors in the above entitled cause and who were duly impaneled and sworn; Jury excused and recess taken until 9:00 a.m. on March 5, 1985.
- Mar. 5 Hon. Robert W. Landry Presiding. E. P. Burns Reporter. Plaintiff in Court in person and with Attorney Curry First and Barbara Zack Quindel. Defendants in court in person and with Assistant City Attorney Reynold Scott Ritter. Court's written decision on Motion to Dismiss read in open court. Statements by counsel. Jury in the box. Opening statement by Plaintiff counsel. Defendants' counsel reserves his opening statement. Trial proceeded: Sworn for the Plaintiff: Jack Cannon, Jr., Jury excused and recess taken until 2:00 p.m. same day.
LATER SAME DAY: All parties again in Court. Jury in the Box. Sworn for the plaintiff; Cyrintia Harris, John Gardner, Marquis L. Harris, Deon Dawson. Jury excused and recess taken until 9:00 a.m. on March 6, 1985.
- Mar. 6 Hon. Robert W. Landry Presiding. E. P. Burns Reporter. Plaintiff in Court in person and with Attorney Curry First and Barbara Zack Quindel. Defendants in Court in person and with Assistant City Attorney Reynold Scott Ritter. Statements by counsel with reference to Drs. Park and Jain depositions. Jury in the Box. Witness Deon Dawson resumes the Witness stand. Sworn for the Plaintiff: Thomas Mitchell, Judson Hansbough, Jury excused and recess taken until 2:00 p.m. same day.
LATER SAME DAY: All parties again in Court. Jury in the Box. Sworn for the Plaintiff: Sheila N. Felder, Bobby Felder. Jury excused and recess taken until 9:00 a.m. on March 7, 1985.

DATE PROCEEDINGS

- Mar. 7 Hon. Robert W. Landry Presiding. E. P. Burns Reporter. Plaintiff in Court in person and with Attorney Curry First and Barbara Zack Quindel. Defendants in Court in person and Assistant City Attorney Reynold Scott Ritter. Jury in the Box. Witness Bobby Felder resumes the witness stand. In absence of the Jury, examination of witness continued by defendant Attorney. Jury in the Box. Sworn for the Plaintiff: Victor Hall, Detective Stanley Olson, adversely. Jury excused and recess taken until 1:45 p.m. same day.
- LATER SAME DAY: All parties again in Court. Video deposition of Dr. Dharam P. Jain, M.D. viewed by the Jury. Recess Taken. Jury in the Box. Sworn for the Plaintiff, adversely: Police Officer Michael Kempfer, Police Officer Robert Conley, Police Officer Patrick Eaton, Jury excused and recess taken until March 8, 1985 at 9:00 a.m.
- Mar. 8 Hon. Robert W. Landry Presiding. E. P. Burns Reporter. Plaintiff in Court in person and with Attorney Curry First and Barbara Zack Quindel. Defendants in Court in person and with Assistant City Attorney Reynold Scott Ritter. Jury in the Box. Sworn for the Plaintiff: Roy Nabors. In absence of the Jury examination of witness continues by the defense. Jury in the Box. Portions of depositions of Officers, Captain Duane Casey, Peter Pochowski, and Segments from the Milwaukee Police Department Rules and Regulations Manual read in open Court to the Jury. Plaintiff rests. Jury excused. Statement by Assistant City Attorney Reynold Scott Ritter with reference of his four motions to dismiss. Recess taken until 1:30 P.M. same day.
- LATER SAME DAY: All parties again in Court. Jury excused and ordered to return

DATE PROCEEDINGS

- March 11, 1985 at 9:30 A.M. Hearing on Defendants' Motions to Dismiss proceeded. Arguments by counsel. Motion No. 1, Denied. Motion No. 2 Taken under Advisement. Motion No. 3 Granted in Part and Denied in Part. Decisions as to Motion No. 4 adjourned to March 11, 1985 at 9:30 a.m.
- Mar. 8 FILED, Court's Written Decision, motion of Feb. 25, 1985.
- Mar. 11 Hon. Robert W. Landry Presiding. E. P. Burns Reporter. Plaintiff in Court in person and with Attorney Curry First and Barbara Zack Quindel. Defendants by Assistant City Attorney Reynold Scott Ritter. Plaintiff's Motion to Reconsider came on for hearing. Motion argued and presented. Motion denied by the Court. Continuation of defendant's Motion No. 4 of 4-8-85 to Dismiss as plaintiff has failed to present a prima facie case, proceeded. Motion argued and presented. Motion denied by the Court. Plaintiff moves for mistrial as to the last two defendants on the case. Motion argued. Motion denied by the Court. Plaintiff's motion to dismiss without prejudice, argued and denied. Plaintiff's motion to be held in contempt as he is withdrawing from the case and does not wish to proceed with the trial, Court examined co-counsel Barbara Zack Quindel. Court examines plaintiff Bobby Felder. Defendant's motion to dismiss with prejudice, granted by the Court. Jury in the Box and discharged.
- FILED, Jury List, Exhibit List.
- Mar. 15 FILED, Order for Judgment from City Attorney.
- Mar. 19 FILED, Letter to Court from Attorney First Objection to Order, and requesting "HOLD" on City Attorney's Proposed order.

DATE PROCEEDINGS

- Mar. 22 FILED, Letter to Court from Attorney Quindel dated 3-21-85.
- Mar. 29 FILED, 60 pages of transcript of proceedings had on 3-11-85.
FILED, 54 pages of transcript of proceedings had on 3-8-85.
FILED, 39 pages of transcript of proceedings had on 2-25-85.
- April 9 FILED, Plaintiff's Post Trial Prejudgment Motions, Notice of Motions, Plaintiff's Memorandum in Support of Plaintiff's Proposed order for Judgment and Order for Judgment.
- April 10 FILED, Signed Order for Judgment (City).
- July 11 155—Entered IT IS ADJUDGED that the action of the plaintiff, Bobby Felder, is dismissed on the merits, and that the *defendants* Duane Casey, Patrick Eaton, Robert Farkas, Michael Kempfer, Gary Hoffman, Peter Pochowski, Robert Connolly, Edward Heideman, Stanley Olson and Roger Weber recover of said *plaintiff* the costs taxed at \$2098.35.
BY THE COURT, Gary J. Barczak, Clerk. Deputy Clerk (illegible).
- April 30 Hon. Robert W. Landry Presiding. E. P. Burns Court Reporter. Plaintiff in Court in person and with Attorneys Curry First and Barbara Zack Quindel. Defendant by Assistant City Attorney Reynold Scott Ritter. Motion to reconsider came on for hearing. Motion argued and submitted. Motion denied by the Court. Further hearing set for May 1, 1985 at 9:00 a.m.
- May 1 Hon. Robert W. Landry Presiding. E. P. Burns Court Reporter. Plaintiff in Court by Attorney Curry First. Defendant by Assistant City Attorney Reynold Scott Ritter. Conference held in chambers.

DATE PROCEEDINGS

- May 24 FILED, Signed Amended Order for Judgment.
- July 16 FILED, Notice of Appeal.
- July 17 Copy of Notice of Appeal and a copy of the Docket Entries transmitted to the Court of Appeals.
- July 31 FILED, Notice of Cross-Appeal.
- July 31 Copy of Notice of Cross-Appeal and a copy of the Docket Entries transmitted to the Court of Appeals.
- Aug. 5 Original record transmitted to the Court of Appeals, by mail, last page 62.
- Aug. 21 FILED, Amended Notice of Cross-Appeal.
- Aug. 23 Supplemental record transmitted to the Court of Appeals, by mail, last page 65.
- 1987
- Aug. 26 FILED, ORDER of the Court of Appeals dated May 16, 1986 that those portions of the judgment entered July 11, 1985, dismissing Felder's federal civil rights claims against those eight defendants who were brought into the case by Felder's second amended complaint are summarily reversed, ETC.
- Aug. 26 FILED, ORDER of the Supreme Court dated September 17, 1986 that the petition and cross-petition for review are granted, ETC.
- Aug. 26 FILED, OPINIONS of the Supreme Court dated June 24, 1987.
- Aug. 26 FILED, REMITTITUR of the Supreme Court dated August 3, 1987 that the decision of the Court of Appeals is reversed, and the cause is remanded to the Circuit Court with instructions.
- Sept. 1 Hon. David V. Jennings, Jr. Presiding. Pursuant to directions of the Supreme Court, action dismissed.

STATE OF WISCONSIN
MILWAUKEE COUNTY

BOBBY FELDER,

Plaintiff,

v.

MICHAEL KEMPFER, JOHN
BAUER, JOSEPH HUSAR, GARY
HOFFMAN, POLICE CHIEF
HAROLD BREIER, CAPTAIN
OF POLICE DUANE CASEY,
DEPUTY INSPECTOR AND
DIRECTOR OF POLICE ACAD-
EMY LEONARD ZIOLKOWSKI,
SERGEANT PATRICK EATON,
SERGEANT ROBERT FARKAS,
ROBERT CONNOLLY, EDWARD
HEIDEMANN, PETER POCHOW-
SKI, STANLEY OLSEN, ROGER
WEBER, and CITY OF
MILWAUKEE,

Defendants.

NOTE: This Second Amended Complaint supersedes the original Complaint filed April 2, 1982 and the subsequent First Amended Complaint.

INTRODUCTION

1. This civil rights police misconduct litigation is brought pursuant to the Civil Rights Act of 1870, 42 U.S.C. §§ 1983, 1985(2)(3) *et seq.* and the First, Fourth, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendments as well as Wisconsin statutory and common law torts. Juris-

CIRCUIT COURT
BRANCH 30

Case No. 579-956

PLAINTIFF'S
SECOND
AMENDED
COMPLAINT

(Filed March 8,
1984)

diction is invoked under 28 U.S.C. § 1343. Claims are also asserted under the Wisconsin and United States Constitutions and specifically the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

PARTIES

Plaintiff

2. Plaintiff is an adult resident of Milwaukee, Wisconsin residing at 4060 North 15th Street.

Defendants

3. Defendant City of Milwaukee is a municipal entity within the State of Wisconsin and is organized and exists under laws of the State of Wisconsin and as a political subdivision of such. Defendant City of Milwaukee, during all relevant times, has been and is the employer of the individual police officers and officials listed in this action.

4. Defendants City of Milwaukee, Breier, Casey, Ziolkowski, Eaton, and Farkas are liable for the willful and wanton misconduct of their subordinate employees and agents and are sued as defendants for the employees and agents common law torts and constitutional and civil rights violations and through respondeat superior for the wrongful conduct of the City of Milwaukee public employees and agents and as subordinates of these supervisory individual defendant police officers.

5. Defendant City of Milwaukee at all times pertinent to this Complaint vested in individual defendants the authority of police officers and provided each of them with such official authority and these police officer individual

defendants engaged in conduct complained of in the name of and while acting as agents and employees for the defendant City of Milwaukee.

6. Defendant Chief Breier, during all relevant times, was the Chief of Police for the defendant City and its Police Department and as such was the highest ranking officer and employee for the Police Department. Defendant, Captain Casey, during all relevant times, was the commanding officer for the 5th District wherein the incident occurred and as such defendant Captain Casey was the highest ranking officer and employee for the Department within the 5th District. Defendant Director of Police Academy Ziolkowski, during all relevant times, was the commanding officer of the Police Academy and as such was the highest ranking officer and employee at the Academy for the Police Department.

7. Individual defendants at all times relevant to the subject matter of this action were duly appointed and qualified law enforcement officers with the defendant City of Milwaukee and in doing the acts and things hereinafter set forth, the defendants were acting in their respective capacity as stated and acting under color of statutes, ordinances, regulations, custom, policy, and usage of the State of Wisconsin and the City of Milwaukee.

8. Each of the individual defendants have acted under color of law in depriving the plaintiff of his rights under the Constitutions of the United States and State of Wisconsin and such acts have caused, and will in the future continue to cause, plaintiff to suffer irreparable harm and damage and injury.

9. At all times herein mentioned, individual defendants and each of them acted in bad faith and with malice and in derogation of their duties and contrary to the Constitutions and laws and regulations and ordinances of the United States, State of Wisconsin, and City of Milwaukee.

10. All individual defendants are white or Caucasian and all defendants are sued in their individual and official capacities.

FACTS

11. On July 4, 1981 in the City of Milwaukee, Milwaukee Police Department Squad 717, containing defendants Olsen and Weber, and Squad 709, containing defendants Connolly, Pochowski, and Heidemann, were dispatched at or shortly after 9:00 p.m. to the 4000 block of North 15th Street respecting a complaint, "man with a gun", and a family trouble complaint at 4046 North 15th Street.

12. During all relevant times these five defendants—Olsen, Weber, Connolly, Pochowski, and Heidemann—were members of the defendant City of Milwaukee Tactical Enforcement Unit aka Tac Squad, aka 700 Squad.

13. At or about this same time period Squad 57, containing defendants Kempfer and Hoffman, and Squad 55, containing defendants Husar and Bauer, were dispatched to the same vicinity under generally the same circumstances.

14. At or shortly after 9:00 p.m. plaintiff, at or near his residence at 4060 North 15th Street, was briefly stopped and detained by defendants Husar and Bauer. Shortly

thereafter a black female informed those two defendants that plaintiff was a "wrong person".

15. Thereafter defendants Connolly, Pochowski, Heideman, Kempfer, Olsen, and Weber, without any provocation from plaintiff, assaulted and battered plaintiff by the use of Police Department night sticks or similar weapon, fists, and other physical force by those defendants against plaintiff. The force against plaintiff resulted in plaintiff being restrained, battered, handcuffed behind his back, thrown to the ground, and beaten until plaintiff was lying unconscious or semi-conscious, face down, on the ground. Thereafter three or more individual defendants dragged plaintiff to a Milwaukee police van and in so dragging plaintiff, deliberately held his body so that plaintiff's face was dragging on the ground and thereafter these defendants threw plaintiff into the police van head first.

16. During the defendants beating of plaintiff, numerous individual defendants confronted a gathering and large crowd of black adult residents of the City of Milwaukee in that immediate neighborhood and threatened one or more of those individuals verbally, including racial epithets such as "niggers", and the pointed display of a Milwaukee Police Department rifle.

17. During the incident defendant Hoffman arrested a neighbor and friend of plaintiff, Marquis Harris, of 4046 North 15th Street, Milwaukee, an arrest lacking probable cause and justification.

18. After plaintiff's arrest he was taken in a defendant City of Milwaukee van to the 5th District where defendant was processed, booked, and held in custody.

19. At the 5th District all defendants in Squads 709 and 717 returned at about the time plaintiff arrived and, in addition, defendant Kempfer wrote the municipal ordinance citation against plaintiff indicating plaintiff was in violation of the defendant City of Milwaukee ordinance of disorderly conduct.

20. At that time, at the 5th District, there was some confusion about what crime, if any, plaintiff had committed and which police officer defendant had witnesses such. Defendant Kempfer told defendant Sergeant Eaton that Kempfer had personally observed plaintiff in violation of the ordinance, disorderly conduct, and as a result defendant Kempfer wrote the citation.

21. This conduct by defendant Kempfer was taken wrongfully and maliciously by Kempfer and based on the race, black, of plaintiff. This conduct by defendant Kempfer was the commencement of a wrongful conspiracy to cover up the willful and wrongful use of excessive force and unlawful arrest by individual defendants against plaintiff. All individual defendants at the scene were personally aware that plaintiff was not in violation of any law or ordinance.

22. Further, individual defendants at the scene on July 4, 1981 were personally aware that at no time did plaintiff strike or attempt to strike any defendants nor did plaintiff at any time resist or hinder in any manner any legitimate law enforcement practice.

23. Further, at the scene, all individual defendants had the opportunity and legal duty to intervene to restrain other police officer defendants who were, in violation of the law, using excessive force against plaintiff. Those in-

dividual defendant police officers at the scene, in violation of their duty, nevertheless took no action, either psysical or verbal, to stop the illegal beating by defendants against plaintiff.

24. Plaintiff at no time committed, nor was committing, any offense against ordinances of the City of Milwaukee or County of Milwaukee or laws of the State of Wisconsin.

25. As a result of the excessive force rendered by defendants against plaintiff, plaintiff was required to receive medical treatment several hours after his beating at Columbia Hospital.

26. As a result of the unlawful beating by defendants, plaintiff suffered multiple bruises and abrasions to his body, including head, causing damage and injury and pain to his body including his head, eyes, teeth, and back. In addition, plaintiff incurred headaches and back pains.

27. Plaintiff's injuries are continuing and have continued through this date and plaintiff has not received medical assurance that such injuries will be other than permanent.

28. While detained and arrested at the 5th District station, plaintiff was denied the request to make a telephone call and was arrested and held in custody for approximately six hours. Plaintiff was only released upon paying \$84 as bail.

29. After the incident late in the evening of July 4, 1981, or early the next morning, Milwaukee Common Council Alderman Roy Nabors, made a telephone call complaint respecting the mistreatment of plaintiff to the 5th District.

Thereafter defendants Sergeants Farkas and Eaton were dispatched to the scene immediately and commenced, that evening or early morning, an investigation which included talking to numerous witnesses of the incident.

30. The investigation by those two defendant sergeants, and other officers with the defendant City of Milwaukee, continued for several days or weeks thereafter and included defendants and Milwaukee police officers taking personal statements from 10 or more civilian witnesses. All of those statements from civilian witnesses indicated two or more defendants engaged in wrongful and excessive use of force against plaintiff.

31. Nevertheless, at no time did the defendant City of Milwaukee or any supervisory officer defendants give any merit or credit to any of those statements memorialized in writing by civilians to police officers and the failure so to do constituted a further specific act in the conspiracy by the defendants to cover up the wrongful conduct by defendants against plaintiff.

32. The civilian witnesses interviewed and questioned by Milwaukee police officers included Bob Hansbrough, Sheila Felder, Don Dawson, Deon Dawson, Dorothy Cannon, Victor Hill, Judson Hansbrough, John Gardner, Sr., Jack Cannon, Thomas Mitchell, and Cynthia Jeffers.

33. Further acts in the conspiracy that was taken wrongfully and intentionally and maliciously against plaintiff and based in whole or in part on the race, black, of plaintiff, include, but are not limited to, the following:

(i) all nonsupervisory individual police officer defendants prepared written reports styled MPD

"Matters of" which falsely stated personal observations of the defendants preparing the reports;

(ii) defendant Sergeant Farkas prepared one or more Matters of including a statement after he interviewed plaintiff and which Matter of was false in material respects;

(iii) defendant Sergeant Eaton prepared one or more Matters of which were false in material respects including a final summary of the case Matter of which defendant Sergeant Eaton submitted to defendant Captain Casey;

(iv) upon receipt of the aforesaid Matter of and the other Matters of and entire investigatory file in this case, defendant Captain Casey deliberately, as a further act of the conspiracy, on information and belief, failed to:

(a) request the defendant City of Milwaukee Police Department Bureau of Internal Affairs assume jurisdiction over the complaint and file based on the discrepancies in the reports and based on the consistent and cumulative civilian statements which should have been given credit and merit;

(b) request the defendant City of Milwaukee Police Department, Police Chief Harold Breier, assume jurisdiction over the complaint and file based on the discrepancies in the reports and based on the consistent and cumulative civilian statements which should have been given credit and merit; and

(c) request the defendant County of Milwaukee Office of District Attorney and/or Wisconsin Department of Justice and/or United States Department of Justice assume jurisdiction over the complaint and file based on the discrepancies in the reports and based on the consistent

and cumulative civilian statements which should have been given credit and merit.

(v) at no time, as a further act of the on-going conspiracy, did any individual defendants who personally observed the incident on July 4, 1981 bring the matter to the attention of any supervisory officer or district attorney in the context of reporting accurately the fact that several individual police officers wrongfully used excessive force against plaintiff and in so doing violated the criminal laws of the State of Wisconsin and the United States;

(vi) as a further act in the conspiracy defendant Sergeant Eaton interviewed plaintiff's spouse, Sheila Felder, and failed to summarize that conversation in his memorandum book; and

(vii) as a further act in the conspiracy defendant Sergeant Eaton received a Matter of from City of Milwaukee police officer Brian Suttle and which report accurately described his observations including mistreatment by police officers against plaintiff and as a result defendant Sergeant Eaton had police officer Suttle's Matter of destroyed and ordered police officer Suttle to prepare a different matter of.

34. On January 12, 1982 the City Ordinance, disorderly conduct, citation against plaintiff was dismissed by action taken by Milwaukee City Attorney's Office.

35. The race of plaintiff is black and the actions taken by defendants against plaintiff were, in whole or in part, based upon said race of plaintiff.

36. The activities of the defendants were wrongful in other respects recognizing:

(i) defendants at no time attempted to identify plaintiff as the appropriate object of their activities and, in fact, ignored the specific objections to the po-

lice activity against plaintiff from observers who indicated to the police plaintiff was the "wrong person";

(ii) defendants did not have an arrest warrant in their possession;

(iii) at no time did defendants tell plaintiff the reason for their actions against plaintiff despite his inquiry.

37. In 1972 the United States Court of Appeals for the Seventh Circuit in *Byrd v. Brishke*, 466 F.2d 6, held generally police officers have a constitutional duty to affirmatively intervene to restrain and stop a fellow police officer who is engaged in the excessive and unlawful use of force. With actual or constructive knowledge of that appeal decision and its progeny, including numerous Seventh Circuit cases following *Byrd* after 1972, nevertheless defendants Chief Breier, Captain Casey, and Director of Police Academy Ziolkowski failed to ever set in motion a training program or any training so that a Milwaukee police officer would be aware of his or her responsibility and duty when such police officer personally observed a fellow police officer engaged in the excessive and unlawful use of force against a civilian.

38. Further, these three defendants, Breier, Ziolkowski, and Casey, failed to instruct individual police officers and all Milwaukee police officers on this issue from 1972 through the present and as such this failure to train on this issue became the established policy and custom of the defendant City of Milwaukee and its Police Department.

39. Further, as far back as 1973 in *Ford v. Breier*, #73-C-65, United States District Court, Eastern District of Wisconsin, 383 F.Supp. 505 these three supervisory de-

fendants have had actual or constructive knowledge that a "failure to train" could constitutionally subject them to liability under federal law and those defendants, nevertheless, failed to take the required affirmative actions respecting training in this regard.

40. Further, as far back as 1976 or earlier in *McKee v. Breier*, United States District Court, Eastern District of Wisconsin, 417 F.Supp. 189 these three defendants had constructive or actual notice that a "failure to train", whether negligent or intentional, could subject them to liability for a constitutional violation.

41. Further, as to the conspiracy to cover up the wrongful beating by individual defendants of plaintiff, further conspiratorial steps were taken but, on information and belief, those have been to date successfully concealed from plaintiff.

42. As to the conspiracy by defendants against plaintiff, it was taken by two or more individual defendants acting in concert and included the unlawful acts cited and further constituted an agreement between those defendants to inflict a wrong and injury on plaintiff and which has, in fact, injured and damaged plaintiff; and, further, that those participants in the conspiracy shared in the cover up, based on race, which was the general object of the conspiracy; and, finally that the essential nature of the conspiracy was known to the defendants and conspirators.

43. As part of the conspiracy supervisory defendants Breier and Casey, pursuant to the defendant City of Milwaukee Police Department Rules and Regulations, had direct communication respecting this case in general and

on information and belief the Complaint from Alderman Nabors in particular as evidenced in part by MPD Rules and Regulations; Rule 2, Section 3; Rule 3, Section 2; Rule 4, Section 3, 7, 10, 21, 22, 31, 44, 61; Rule 7, Section 1, 4, 5, 6, 41.

44. Further, the destruction of the Matter of by defendant Sergeant Eaton was in violation of Rule 4, Section 45, 58, 61, 76, and 77.

45. The actions of defendants constitute intentional and malicious violations by those defendants, jointly and severally, of plaintiff's Fourteenth Amendment rights only to be arrested and restrained upon the presence of probable cause and constitute violations by the defendants of 42 U.S.C. § 1983.

46. The actions of defendants constitute intentional and malicious violations by the defendants, jointly and severally, of the plaintiff's Wisconsin constitutional rights to be arrested and restrained only upon the presence of probable cause and constitute violations by the defendants of the Wisconsin Constitution and Wisconsin Statutes.

47. The actions of defendants constitute intentional and malicious violations by these defendants, jointly and severally, of plaintiff's Fourteenth Amendment rights to be free from unlawful, unreasonable, excessive, and improper force and violations by these defendants of 42 U.S.C. § 1983.

48. The defendants also conspired under 42 U.S.C. § 1985 in that they attempted and were successful in having plaintiff charged with a city ordinance violation of disorderly conduct under circumstances wherein defen-

dants were aware plaintiff was not in fact, at any time, disorderly. Rather defendants attempted to have such charges presented and a resulting conviction so it would cover up the unlawful activities of defendants and act as a pretext for their unlawful beating of plaintiff.

49. Respecting the failure to train issues because the highest-ranking officials with the defendant City of Milwaukee are constitutionally liable and because the failure to train on those issues has occurred over a passage of decades, it has become the custom and policy of the defendant City of Milwaukee.

50. As to all claims against all individual defendants, plaintiff is independently, jointly and severally, claiming statutory indemnification under sec. 895.46 *et seq.* Stats. so that defendant City of Milwaukee does indemnify any and all judgments.

CAUSES OF ACTION

51. With respect to all causes of action set forth below, plaintiff incorporates the allegations contained in ¶s 1 through and including number 50 of this Complaint.

52. As a direct and approximate result of the actions of defendants set forth herein, plaintiff has been injured in his employment feelings, enjoyment of life, and victimized based on plaintiff's race, black.

53. The conduct of defendants described herein deprive plaintiff of his rights under the United States and Wisconsin Constitutions including plaintiff's right not to be deprived of liberty without due process of law, his right not to be arrested and restrained without warrant or probable cause, and his right not to be arbitrarily and un-

lawfully beaten, assaulted, and injured. As a direct result, plaintiff was falsely and unlawfully restrained and held, which caused plaintiff fear, distress, humiliation, and degradation.

54. Some or all of the defendants as described above met from time to time and planned, agreed, and conspired together with the purpose of and intent to use their official position to deprive plaintiff of due process of law and of equal protection of the laws. The planning and agreement and conspiracy was in fact undertaken, effectuated, and accomplished its purpose previously described.

55. The planning, agreement, and conspiracy was intended to and did injure plaintiff by reason of his race, black, and denied plaintiff equal protection of law including, but not limited to, plaintiff's rights under 42 U.S.C. §§ 1985(2) and (3).

56. Defendant City of Milwaukee and supervisory defendants Breier and Ziolkowski did fail to properly supervise these defendants in employment and failed to properly train them with respect to the constitutional and statutory duty of police officers to intervene and prevent the commencement of or continuation of an unlawful beating by a fellow police officer employee directed against a civilian.

57. The use of excessive force, false arrest, and false imprisonment also violates plaintiff's rights in this regard under the Wisconsin Constitution, Wisconsin Statutes, and Wisconsin common law.

58. Further, the bringing of charges against plaintiff for disorderly conduct violated plaintiff's right to be free

from the bringing of false charges as part of a cover up and free from malicious prosecution and abuse maliciously of process.

59. The force used against plaintiff by defendants constituted the unconstitutional use of deadly force in that the force used was extreme and potentially deadly in circumstances wherein plaintiff had not committed a felony and in circumstances wherein plaintiff did not endanger any human life.

REMEDIES

WHEREFORE, plaintiff makes demand for the following:

1. Pursuant to 42 U.S.C. §§ 1983 *et seq.* the United States and Wisconsin Constitutions, the statutory and common law of the State of Wisconsin, the federal and state law of damages:

(i) compensatory damages for actual injuries including, but not limited to, future loss and injury due to medical injuries and victimization by reason of race, against defendants, jointly and severally, in the amount of \$800,000.00 to compensate plaintiff for the damages and injuries; and

(ii) punitive damages in the amount of \$1.5 Million due to the malice of the defendants and in order to vindicate the primacy of the rights violated and in order to deter future similar violations, as to defendants jointly and severally.

2. All costs of this action including reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

3. Such further equitable and legal relief as the Court may deem necessary.

Dated at Milwaukee, Wisconsin this 8th day of March
1984.

/s/ Curry First
CURRY FIRST
Perry, First, Reiher, Lerner &
Quindel, s.c.
1219 North Cass Street
Milwaukee, WI 53202

Attorney for Plaintiff

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

BOBBY FELDER,

Plaintiff,

v.

MICHAEL KEMPFER, JOHN
BAUER, JOSEPH HUSAR, GARY
HOFFMAN, POLICE CHIEF
HAROLD BREIER, CAPTAIN OF
POLICE DUANE CASEY,
DEPUTY INSPECTOR AND
DIRECTOR OF POLICE ACAD-
EMY LEONARD ZIOLKOWSKI,
SERGEANT PATRICK EATON,
SERGEANT ROBERT FARKAS,
ROBERT CONNOLLY, EDWARD
HEIDEMANN, PETER POCHOW-
SKI, STANLEY OLSEN, ROGER
WEBER, and CITY OF
MILWAUKEE.

ANSWER TO
SECOND
AMENDED
COMPLAINT

Case No. 579-956

(Filed June 12,
1984)

Defendants.

NOW COME the defendants by their attorneys, Grant
F. Langley, City Attorney, and Michael A.I. Whitcomb,
Assistant City Attorney, and as and for an answer to the
second amended complaint, allege and show to the court
as follows:

1. Answering paragraph 1 of the second amended
complaint, the defendants deny the same.
2. Answering paragraph 2 of the second amended
complaint, the defendants admit the same.

3. Answering paragraph 3 of the second amended complaint, the defendants admit the same.

4. Answering paragraph 4 of the second amended complaint, the defendants deny the same.

5. Answering paragraph 5 of the second amended complaint, the defendants deny the same.

6. Answering paragraph 6 of the second amended complaint, the defendants admit the same.

7. Answering paragraph 7 of the second amended complaint, the defendants allege that paragraph 7 states legal conclusions only.

8. Answering paragraph 8 of the second amended complaint, the defendants deny the same.

9. Answering paragraph 9 of the second amended complaint, the defendants deny the same.

10. Answering paragraph 10 of the second amended complaint, the defendants admit that all individual defendants are white or Caucasian; as to the remaining allegations contained in paragraph 10 of the second amended complaint, the defendants deny the same.

11. Answering paragraph 11 of the second amended complaint, the defendants admit that on July 4, 1981 in the City of Milwaukee, Milwaukee Police Department Squad 717, containing defendants Olsen and Weber, and Squad 709, containing defendants Connolly, Pochowski, and Heidemann, were dispatched at or shortly after 9:00 p.m. to the 4000 block of N. 15th Street respecting a complaint, "man with a gun"; as to the other allegations contained in paragraph 11 of the second amended complaint,

the defendants are without information sufficient to form a belief as to the truth of the matters contained therein and therefore deny the same.

12. Answering paragraph 12 of the second amended complaint, the defendants admit the same.

13. Answering paragraph 13 of the second amended complaint, the defendants admit that on July 4, 1981 at approximately 9:00 p.m. Squad 57, containing defendants Kempfer and Hoffman, was dispatched to the alley of the 4000 block of N. 14th Street regarding a man holding a gun on another man possibly related to family trouble at 4046 N. 15th Street; the defendants further admit that on July 4, 1981 at approximately 9:00 p.m. Squad 55 containing defendants Husar and Bauer was dispatched to the alley in the 4000 block of N. 15th Street regarding a man with a gun which may have been related to a family trouble complaint at 4146 N. 14th Street; as to the other allegations contained in paragraph 13 of the second amended complaint, the defendants are without information sufficient to form a belief as to the truth of the matters contained therein and therefore deny the same.

14. Answering paragraph 14 of the second amended complaint, the defendants admit that at or shortly after 9:00 p.m. the plaintiff was observed leaving the residence located at 4046 N. 15th Street and was interviewed by defendants Husar and Bauer. During the interview other individuals stated that the plaintiff was not involved in the incident at 4046 N. 15th Street; as to the other allegations contained in paragraph 14 of the second amended complaint, the defendants are without information suffi-

cient to form a belief as to the truth of the matters contained therein and therefore deny the same.

15. Answering paragraph 15 of the second amended complaint, the defendants deny the same.

16. Answering paragraph 16 of the second amended complaint, the defendants admit that a large crowd had gathered and that a police officer in the vicinity was in possession of a Milwaukee Police Department rifle; as to the other allegations contained in paragraph 16 of the second amended complaint, the defendants are without information sufficient to form a belief as to the truth of the matters contained therein and therefore deny the same.

17. Answering paragraph 17 of the second amended complaint, the defendants deny the same.

18. Answering paragraph 18 of the second amended complaint, the defendants admit the same.

19. Answering paragraph 19 of the second amended complaint, the defendants admit that defendant Kempfer wrote a municipal ordinance citation against the plaintiff indicating plaintiff was in violation of the defendant City of Milwaukee's ordinance prohibiting disorderly conduct; as to the other allegations contained in paragraph 19 of the second amended complaint, the defendants deny the same.

20. Answering paragraph 20 of the second amended complaint, the defendants admit that defendant Kempfer conferred with Sergeant Eaton and thereafter defendant Kempfer issued a citation to the plaintiff for disorderly conduct based upon his personal observations and infor-

mation received from other officers; as to the other allegations contained in paragraph 20 of the second amended complaint, the defendants deny the same.

21. Answering paragraph 21 of the second amended complaint, the defendants deny the same.

22. Answering paragraph 22 of the second amended complaint, the defendants deny the same.

23. Answering paragraph 23 of the second amended complaint, the defendants deny the same.

24. Answering paragraph 24 of the second amended complaint, the defendants deny the same.

25. Answering paragraph 25 of the second amended complaint, the defendants deny the same.

26. Answering paragraph 26 of the second amended complaint, the defendants deny the same.

27. Answering paragraph 27 of the second amended complaint, the defendants are without information sufficient to form a belief as to the truth of the matters contained therein and therefore deny the same.

28. Answering paragraph 28 of the second amended complaint, the defendants deny the same.

29. Answering paragraph 29 of the second amended complaint, the defendants admit that Sergeants Farkas and Eaton conducted an investigation regarding the incident; as to the other allegations contained in paragraph 29 of the second amended complaint, the defendants are without information sufficient to form a belief as to the truth of the matters stated therein and therefore deny the same.

30. Answering paragraph 30 of the second amended complaint, the defendants admit that an investigation was conducted by Sergeants Farkas and Eaton relative to the incident which included numerous interviews with civilian witnesses; as to the other allegations contained in paragraph 30 of the second amended complaint, the defendants deny the same.

31. Answering paragraph 31 of the second amended complaint, the defendants deny the same.

32. Answering paragraph 32 of the second amended complaint, the defendants admit the same.

33. Answering paragraph 33 of the second amended complaint, the defendants deny the same.

34. Answering paragraph 34 of the second amended complaint, the defendants admit that on or about January 12, 1982, the disorderly conduct citation issued to the plaintiff was dismissed upon the motion of the City of Milwaukee.

35. Answering paragraph 35 of the second amended complaint, the defendants deny the same.

36. Answering paragraph 36 of the second amended complaint, the defendants deny the same.

37. Answering paragraph 37 of the second amended complaint, the defendants deny the same.

38. Answering paragraph 38 of the second amended complaint, the defendants deny the same.

39. Answering paragraph 39 of the second amended complaint, the defendants deny the same.

40. Answering paragraph 40 of the second amended complaint, the defendants deny the same.

41. Answering paragraph 41 of the second amended complaint, the defendants deny the same.

42. Answering paragraph 42 of the second amended complaint, the defendants deny the same.

43. Answering paragraph 43 of the second amended complaint, the defendants deny the same.

44. Answering paragraph 44 of the second amended complaint, the defendants deny the same.

45. Answering paragraph 45 of the second amended complaint, the defendants deny the same.

46. Answering paragraph 46 of the second amended complaint, the defendants deny the same.

47. Answering paragraph 47 of the second amended complaint, the defendants deny the same.

48. Answering paragraph 48 of the second amended complaint, the defendants deny the same.

49. Answering paragraph 49 of the second amended complaint, the defendants deny the same.

50. Answering paragraph 50 of the second amended complaint, the defendants deny the same.

51. Answering paragraph 51 of the second amended complaint, the defendants incorporate by reference the answers to paragraphs 1-51 of this answer to the second amended complaint.

52. Answering paragraph 52 of the second amended complaint, the defendants deny the same.

53. Answering paragraph 53 of the second amended complaint, the defendants deny the same.

54. Answering paragraph 54 of the second amended complaint, the defendants deny the same.

55. Answering paragraph 55 of the second amended complaint, the defendants deny the same.

56. Answering paragraph 56 of the second amended complaint, the defendants deny the same.

57. Answering paragraph 57 of the second amended complaint, the defendants deny the same.

58. Answering paragraph 58 of the second amended complaint, the defendants deny the same.

59. Answering paragraph 59 of the second amended complaint, the defendants deny the same.

NOW COME the defendants by their attorneys, Grant F. Langley, City Attorney, and Michael A. I. Whitecomb, Assistant City Attorney, and by way of affirmative defenses allege and show to the court as follows:

60. All acts done and actions taken by the defendants were done or taken in good faith.

61. The plaintiff has failed to state a claim against any of the defendants under 42 U.S.C. § 1983 upon which relief may be granted.

62. The plaintiff has failed to state a claim against any of the defendants under 42 U.S.C. § 1985 upon which relief may be granted.

63. The plaintiff has failed to state a claim against any of the defendants under 42 U.S.C. § 1985 cognizable under state law.

64. The plaintiff has failed to state a claim against any of the defendants for malicious prosecution.

65. The plaintiff has failed to state a claim against the City of Milwaukee upon which relief may be granted.

66. The plaintiff alleged claims against Police Chief Harold Breier, Captain of Police Duane Casey, Deputy Inspector and Director of Police Academy Leonard Ziolkowski, Sergeant Patrick Eaton, Sergeant Robert Farkas, Robert Connolly, Edward Heidemann, Peter Pochowski, Stanley Olsen, Robert Weber, and the City of Milwaukee are barred by the statute of limitations.

67. All acts done by the defendants were done in full compliance with the law.

68. The plaintiff has failed to comply with the provisions of sec. 893.80, Stats.

69. At the time of plaintiff's arrest, probable cause existed for his arrest for violating the laws of the State of Wisconsin and the ordinance of the City of Milwaukee prohibiting a person from engaging in disorderly conduct.

70. Any force used by the defendants in effectuating the arrest of the plaintiff was reasonably necessary under the circumstances.

NOW, THEREFORE, the defendants demand judgment against the plaintiff as follows:

1. That the complaint be dismissed on its merits.
2. For costs and disbursements.
3. For any further relief the court deems just and equitable.

Dated at Milwaukee, Wisconsin, this 12th day of June,
1984.

GRANT F. LANGLEY
City Attorney

/s/ Michael A. I. Whitcomb
Assistant City Attorney
Attorney for defendants

P.O. ADDRESS:

800 City Hall
200 E. Wells St.
Milwaukee, WI 53202
(414) 278-2601
